

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

RICHARD KINGSBERRY, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

CHICAGO TITLE INSURANCE  
COMPANY,

Defendant.

NO. C07-5706 RBL

STIPULATED PROTECTIVE  
ORDER

WHEREAS, the proceeding in this action will involve the production or disclosure of confidential, proprietary, and commercially or personally sensitive information and/or documentation, and upon stipulation of the parties for entry of a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED:

I. The following definitions shall apply to this Order:

A. "Material" shall mean all documents, records, tangible materials, testimony, responses to discovery, and other information, produced, served, disclosed,

STIPULATED PROTECTIVE ORDER

No. C07-5706 RBL

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2 or filed after the date of this Order, including, without limitation, all copies, excerpts,  
3 and summaries in connection with this action.

4 B. "Confidential Material" includes information containing an  
5 individual's personal information, such as social security numbers and loan numbers,  
6 internal documentation that, if publicly disclosed, could lead to theft of trade secrets for  
7 Defendant or identify theft for an individual, and other material containing confidential,  
8 proprietary, or commercially sensitive financial, technical or business information.  
9 "Confidential Material" shall also include any "non-public personal information" that  
10 may be protected by privacy laws, including the Gramm-Leach-Bliley Act, 15 U.S.C. §§  
11 6801 – 6809, which information may be produced, subject to this Order, in response to  
12 discovery requests served in this action. The designation "Confidential Material" can  
13 further be applied to Material produced by a Party in this case before entry of this Order.

14 C. "Designator" shall mean any Party designating Material as  
15 Confidential Material. Any non-party from whom information or documentation is  
16 sought by subpoena or otherwise in connection with this action may become a  
17 Designator and provide the information or documentation subject to this Order if the  
18 non-party so requests in good faith.

19 D. A "Party" and the "Parties" shall mean Plaintiff Richard Kingsberry  
20 and/or Defendant Chicago Title Insurance Company ("Chicago Title"), its officers,  
21 directors, and employees and any other person added to the case as a party. Chicago  
22 Title may designate material as Confidential Material that it produces on behalf of itself,  
23 its parent company, subsidiaries, affiliated companies and their internal divisions.

E. "Counsel" shall mean in-house counsel or outside counsel who have

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2 entered an appearance for the Parties, members of their firms, associate attorneys, and  
3 paralegal, clerical, and other regular employees of such counsel assisting in the conduct  
4 of this action.

5 F. "Approved Third Parties" shall mean copy services retained by  
6 Parties' counsel for the preparation of this action, certified court reporters,  
7 videographers transcribing or filming depositions or testimony involving such  
8 Confidential Material, and non-party witnesses who may be examined and may testify  
9 concerning Confidential Material if it appears on its face or from other Material that the  
10 witness is the author or recipient of such Confidential Material.

11 G. "Independent Advisors" shall mean consultants and other experts  
12 retained by counsel and/or any Party to assist in the conduct of this action.

13 II. Confidential Material shall be subject to the following restrictions:

14 A. Confidential Material shall be used only for the preparation and  
15 trial of this action (including appeals) and for no other purpose, including (but not  
16 limited to) use in other legal actions, present or future. Confidential Material shall not  
17 be given, disclosed, summarized, described, characterized or otherwise communicated  
18 or made available to anyone except those specified in subparagraph II(B) of this Order,  
19 and any such disclosure is permitted subject to this Order and only to the extent  
20 reasonably necessary to prosecute and defend this action.

21 B. Confidential Material may be disclosed, in accordance with  
22 paragraph III of this Order, only to:

- 23 1. Counsel;  
2. The Parties;

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2 3. The Court, court personnel, court reporters, and jurors;  
3 4. Independent Advisors;  
4 5. Approved Third Parties;  
5 6. Witnesses called to give testimony at deposition, trial or  
6 otherwise in this action; and

7 7. Any other person upon order of the Court or to whom the  
8 Designator and Parties agree in writing.

9 C. Any person to whom Confidential Material is produced shall  
10 maintain such Confidential Material in a secure location.

11 D. Pursuant to Local Civil Rule 26(c), Confidential Material used as  
12 exhibits to or incorporated in any other manner in briefs, memoranda, deposition  
13 transcripts or other documents filed with the Court shall be protected as follows: To the  
14 extent that any brief, memorandum, deposition transcript or other document submitted  
15 to the Court incorporates or refers to the substance of any information contained in any  
16 designated Confidential Material produced by another party or third party, the party  
17 filing such brief, memorandum, deposition transcript or other document or portion  
18 thereof shall file a motion or stipulation to seal pursuant to Local Civil Rule 5(g).

19 III. Approval for Access to Confidential Material

20 A. Each person to be given access to Confidential Material pursuant to  
21 this Order (except those identified in subparagraphs II(B)(1) and (3) of this Order) shall  
22 be provided with a copy of this Order and shall be told that: (1) the Confidential Material  
23 is being disclosed pursuant to and subject to the terms of this Order and may not be  
disclosed or used other than pursuant to the terms of this Order; and (2) the violation of

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2 the terms of the Order may subject the person to punishment for contempt of a Court  
3 order.

4 B. Except as provided in paragraph C, below, any person given access  
5 to Confidential Material (except those identified in subparagraphs II(B)(1) (2) and (3) of  
6 this Order) must first read this Order, and acknowledge in writing, in the form attached  
7 as Exhibit A, that he or she is bound by this Order and subject to the jurisdiction of this  
8 Court for enforcement of this Order.

9 C. If Confidential Material is to be disclosed to a witness during a  
10 deposition or trial, the party seeking to protect the material may seek to obtain the  
11 witness's acknowledgement that he or she is bound by and subject to the terms of this  
12 Order and the Court's jurisdiction for purposes of enforcement of this Order, and the  
13 witness's consent may be made on the record and under oath, rather than in writing,  
14 and any objection may also be made orally. If the witness does not consent, the  
15 Confidential Material shall not be disclosed pending resolution of any objections..

16 D. Any Independent Advisor or non-party witness or employee, in  
17 addition to certifying that he or she has read this Order and manifests his or her assent  
18 to be bound thereby by signing Exhibit A, shall return all Confidential Material to the  
19 Party that retained him or her following the termination of his or her services in the  
20 litigation. Once a person has terminated services in this litigation, he or she will no  
21 longer be permitted access to Confidential Material unless he or she executed a new  
22 written acknowledgement, as expressed in Exhibit A. Individuals, including  
23 Independent Consultants, receiving or shown Confidential Material shall not be  
permitted to retain copies of the Confidential Materials.

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2 E. Nothing herein shall prohibit a Party, or its Counsel, from  
3 disclosing a document designated "CONFIDENTIAL" to the author or recipient of such  
4 document, or to a person who is a current officer, director, or employee of the same  
5 company as the author or recipient.

6 F. Each individual who receives any Confidential Material hereby  
7 agrees to subject himself or herself (a) to this Court's jurisdiction for the purpose of any  
8 proceedings relating to the performance under, compliance with, or violation of this  
9 Order, and (b) to the applicable provisions of the Federal Rules of Civil Procedure for  
10 the purposes of all discovery, including depositions, in this matter. The recipient of any  
11 Confidential Material that is provided under this Order shall maintain such information  
12 in a secure and safe area and in a manner which ensures that access to Confidential  
13 Information is strictly limited to persons entitled to receive Confidential Information in  
14 accordance with this Order's provisions.

15 IV. Confidential Material shall be designated as follows:

16 A. In the case of documents or other tangible Materials, such as  
17 videotape or computer diskettes, the documents and Materials are to be unobtrusively  
18 marked by the Designator as "CONFIDENTIAL" or "CONFIDENTIAL MATERIAL,"  
19 with or without the words "SUBJECT TO PROTECTIVE ORDER," on each page or item  
20 containing Confidential Material.

21 B. All documents made available for inspection shall be treated as  
22 Confidential Material until copies are produced. Once specific documents have been  
23 selected for copying, any document containing Confidential Material may be marked  
before delivery to the Party who inspected and selected the documents.

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2 C. A Party shall not waive the right to designate documents as  
3 Confidential Material by reason of making the documents available for inspection before  
4 they are copied and marked pursuant to this procedure. Such documents may be  
5 reviewed only by persons authorized to receive Confidential Material pursuant to this  
6 Order.

7 D. In the case of written discovery responses, designation may be  
8 made by placing the words "CONFIDENTIAL MATERIAL," with or without the words  
9 "SUBJECT TO PROTECTIVE ORDER," on each page of any such response, or by serving  
10 responses containing such information in a separate document where the entirety of  
11 such response is to be designated.

12 E. In the case of depositions or other testimony, designation of the  
13 portion of the testimony (including exhibits) that contains Confidential Material shall be  
14 made by a statement on the record before the end of each day in which the testimony is  
15 concluded, or by a written statement sent to all counsel within 15 business days after  
16 receipt of the transcript of such testimony.

17 F. If the designation is made during a deposition, only persons to  
18 whom disclosure of Confidential Material is permitted under Section II of this Order  
19 shall remain present while Confidential Material is being used or discussed, and the  
20 court reporter shall bind the transcript in separate portions containing the non-  
21 confidential material and Confidential Material. If, during the course of a deposition,  
22 the response to a question would require the disclosure of Confidential Material and  
23 unauthorized persons are present, the witness may refuse to answer for the Party whose  
Confidential Material would be disclosed. Counsel may instruct the witness not to

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2 answer or not to complete his answer, as the case may be, until any persons not  
3 authorized to receive Confidential Material have left the room.

4 G. The court reporter shall place the words "CONFIDENTIAL  
5 MATERIAL" on the cover of the relevant portions of the transcript.

6 H. Any court reporter or videographer who transcribes or videotapes  
7 testimony in this action at a deposition shall be required to agree, before transcribing or  
8 videotaping any such testimony, that all information designated Confidential Material  
9 shall not be disclosed except as provided in this Order, and that copies of any transcript,  
10 reporter's notes, videotapes, or any other transcription records of any such testimony  
11 will be retained in absolute confidence and safekeeping by such report or videographer  
12 or shall be delivered to any attorney or record or filed under seal with the Court. The  
13 party who notices a deposition shall be responsible for notifying any court reporter or  
14 videographer of these obligations.

15 V. Confidential Material shall be utilized and/or disclosed in trial or other  
16 court hearings or proceedings as allowed and/or determined by the Court.

17 VI. The Parties may challenge the designation of Confidential Material under  
18 certain circumstances.

19 A. No Party concedes that any material designated by any other person  
20 as Confidential Material contains trade secrets or non-public, commercial, financial, or  
21 business information, or has been properly designated as Confidential Material.

22 B. A Party may challenge a Designator's designation of "Confidential  
23 Material" at any time by making application to the Court that the Confidential Material



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2 not be treated as such. In any such application to the Court, the burden of justifying any  
3 designation shall be on the Designator. Before seeking any relief from the Court under  
4 this Paragraph, the objecting Party and Designator shall make a good faith effort to  
5 resolve any dispute concerning the confidential treatment of any document. A Party  
6 shall not be obligated to challenge the propriety of a "Confidential Material" designation  
7 at the time made, and a failure to do so does not preclude a subsequent challenge  
8 thereto. In the event a motion is filed pursuant to this paragraph, the Confidential  
9 Information in question shall remain subject to this Order, until the Court rules on the  
10 motion.

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12 C. Any Designator may, at any time, withdraw the designation of  
13 "Confidential Material" for any or all of what it has designated as such.

14 D. This Order may be altered or modified only by agreement of counsel  
15 for all Parties in writing, including on a transcript or by the Court.

16 VII. If any information that a Party claims in good faith is "Confidential  
17 Material" is inadvertently disclosed to a receiving party without being properly  
18 designated as Confidential Material, the Designator may notify each receiving Party in  
19 writing as soon as reasonably possible after becoming aware that the Confidential  
20 Material was not properly designated. The notification shall identify with specificity the  
21 Material to be designated Confidential Material. Upon receipt of written notice as  
22 provided by this Order, the receiving Party shall mark the original and all known copies  
23 of the Material with the property designation and treat the information as "Confidential  
Material" under this Order. To the extent that protected information may have been

disclosed to a person other than an authorized person, the Party shall inform the Designator and make every reasonable effort to retrieve the information and avoid any further disclosure to non-authorized persons.

VIII. Following the conclusion of this action, including any appeals, all Material designated as, or reflecting, Confidential Material and all copies of them (other than material filed with the Court), shall be returned by counsel for the receiving Party to counsel for the Designator or alternatively be destroyed with a certificate provided from the attorney of record certifying destruction.

IX. This Order shall survive and continue to be binding after the conclusion of this action. The Court shall retain jurisdiction to enforce this Order through a period of thirty days following the return or destruction of Material as described in Paragraph VIII.

X. Each Party and person bound by this Order may move for modification of this Order for good cause on notice in writing to the Parties.

XI. Production or disclosure of Confidential Material under this Order shall not prejudice the right of any person making that production or disclosure to maintain the trade secret status or confidentiality of that Material in other contexts.

XII. Nothing in this Order shall affect in any way the admissibility of any document, tangible thing, testimony, or other evidence at trial, nor shall it prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any document, testimony or evidence subject to this Order. Nothing in this Order shall prejudice in any way the rights of any Party to object to the production of documents or information it considers not subject to discovery.

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2 XIII. If a person who has received Confidential Material is served with a  
3 document request, subpoenaed, or otherwise requested to disclose or allow access to  
4 such Confidential Material, that person shall: (i) give prompt written notice of that  
5 request to the Designator of that Confidential Material; (ii) object to the production of  
6 such Confidential Material on the grounds of the existence of this Order; and (iii)  
7 decline to produce such Confidential Material unless otherwise required by a court  
8 order.

9 XIV. Notwithstanding any other provision of this Order to the contrary, the  
10 confidentiality obligations of this Order shall not apply, or shall cease to apply, to any  
11 information that:

12 A. At the time of disclosure hereunder, was already lawfully in the  
13 possession of the receiving party and was not acquired under any obligation of  
14 confidentiality; or

15 B. At the time of disclosure hereunder was, or subsequently becomes,  
16 through no fault of the receiving party, a public document or publicly available.

17 XV. Nothing in the provisions of this Order shall prevent a conveying party  
18 from using its own Confidential Material in any manner such conveying Party desires.

19 XVI. This Order shall not preclude any party from seeking and obtaining, on an  
20 appropriate showing, such additional protection with respect to Confidential Material as  
21 that Party may consider appropriate.

22 XVII. In stipulating to this Order, no Party has waived any applicable privilege  
23 or work- product protection, and this Order shall not affect the ability of a Party to seek  
relief from inadvertent disclosure of material protected by privilege or work product

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2 protection.

3 XVIII. No party to this action, by entering into this Order, by designating certain  
4 material as Confidential Material under this Order, or by acquiescing in any other  
5 Party's or third-party's such designation, admits anything relative to the confidential  
6 status and/or trade secret status of such information.

7 XIX. The Parties, by and through counsel, agree to be bound by the terms of this  
8 Order and stipulate that the Court may enter this Order in the form presented.

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10 Respectfully submitted this 13<sup>th</sup> day of April, 2009.

11 /s/ Clifford Cantor

12 Clifford Cantor (WSBA #17893)  
13 LAW OFFICES OF CLIFFORD A.  
14 CANTOR, P.C.  
15 627 208<sup>th</sup> Avenue SE  
16 Sammamish, WA 98074  
17 Tel: (425) 868-7813  
18 Fax: (425) 868-7870  
19 One of the Attorneys for Plaintiff

20 /s/ Ted Buck

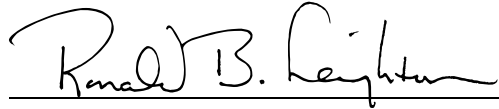
21 Anne M. Bremner (WSBA # 13269)  
22 Ted Buck (WSBA # 22029)  
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**AGREED ORDER**

IT IS SO ORDERED.

Dated this 14<sup>th</sup> of April, 2009.



RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE

Presented by:

LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

By: /s/ Clifford A. Cantor, WSBA # 17893

-and-

STAFFORD FREY COOPER

By: /s/ Ted Buck, WSBA #22029

**Exhibit A**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

RICHARD KINGSBERRY, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

CHICAGO TITLE INSURANCE  
COMPANY,

Defendant.

NO. C07-5706 RBL

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

1. I have read the Protective Order, dated March \_\_\_\_, 2009, and entered in this action. I am familiar with the provisions of the Protective Order and acknowledge that I am bound to abide by them.

2. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order against me in this action and understand that I may be found in contempt of Court if I violate that Order.

3. I understand and agree that my obligations under the Protective Order will survive and continue beyond the termination of this action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name